

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

Eryk J’Von Smith,

Plaintiff,

v.

Georgetown County, Alicia Richardson,
Melvin Garrett,

Defendants.

Case No. 2:22-cv-01469-RMG

ORDER AND OPINION

Before the Court is the Magistrate Judge’s Report and Recommendation that this action be dismissed without prejudice for failure to comply with a court order. (Dkt. No. 12). Plaintiff did not file an objection to the Magistrate Judge’s Report and Recommendation. For the reasons set forth below, the Court adopts the Magistrate Judge’s Report and Recommendation as the Order of the Court.

I. Background

Plaintiff proceeding *pro se* brings this action pursuant to 42 U.S.C. § 1983 alleging violations of his constitutional rights. (Dkt. No. 1). The Magistrate Judge issued a Proper Form Order directing Plaintiff to file, within 21 days, an amended complaint to cure certain pleading deficiencies described in the Proper Form Order. (Dkt. No. 6 at 3). The Magistrate Judge also warned that a failure to provide the necessary information to bring the case in proper form would result in a dismissal of this action. The time to bring the case into proper form has lapsed, and the Magistrate Judge now recommends dismissing this case without prejudice for failure to comply with an order of the court. (Dkt. No. 12 at 2). The Magistrate Judge’s Recommendation is now ripe for the Court’s review.

II. Standard

The Magistrate Judge's Report is made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District of South Carolina. The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. *See Matthews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making a *de novo* determination of those portions of the Report to which specific objections are made, and the Court may accept, reject, or modify, in whole or in part, the Magistrate Judge's recommendation, or recommit the matter with instructions. *See* 28 U.S.C. § 636(b)(1). Objections to a Report and Recommendation must specifically identify portions of the Report and the basis for those objections. Fed. R. Civ. P. 72(b) "[I]n the absence of a timely filed objection, a district court need not conduct a *de novo review*, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Diamond v. Colonia Life & Acc. Ins. Co.*, 416 F.3d 310, 316 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note).

III. Discussion

The Court finds that the Magistrate Judge correctly addressed Plaintiff's deficient complaint. Given the pleading deficiencies laid out in the Magistrate Judge's Proper Form Order (Dkt. No. 6), the Court agrees that it was proper for Plaintiff to be given time to amend his complaint to cure any deficiencies. Plaintiff, however, failed to comply with the court's Order and his Complaint remained deficient. Plaintiff also failed to provide a response to the Magistrate's Report and Recommendation within the time set for filing objections. Because Plaintiff failed to respond to the Magistrate Judge's Proper Form Order or to the Report and Recommendation, the

Magistrate Judge correctly concluded that Plaintiff's Complaint should be dismissed without prejudice for failure to comply with an order of the court.

IV. Conclusion

After a thorough review of the Report and the record in this case, the court finds that the Report provides an accurate summary of the facts and law. The Court **ADOPTS** the Magistrate Judge's Report and Recommendation (Dkt. No. 12). It is therefore **ORDERED** that Plaintiff's action is **DISMISSED** without prejudice.

s/ Richard Mark Gergel
Richard Mark Gergel
United States District Judge

November 15, 2022
Charleston, South Carolina